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(2/4/05)

CHAPTER 98

STREETS AND SIDEWALKS

ARTICLE VI. Swales

Sec. 98-167. Purpose and Intent.

- A. Hereafter, this Article shall be referred to as the City's Swale Ordinance.
- B. The purpose of this Ordinance is to provide for a uniform standard for use, maintenance and enforcement for the City's swales, as defined herein, in order to improve their overall appearance and function. This Ordinance is intended to stress quality not uniformity of swales and is intended to be flexible enough to allow residents and property owners to express their individual tastes and preferences within a set of established guidelines contained herein.
- C. To the extent possible, it is the intent of the City to have this Ordinance embrace all swale areas within the specified residential zones in the City, inclusive of State and County roadways.
- D. The Swale Ordinance is intended to protect public investments that are to be made as part of the City's Capital Improvement Program on a regular basis. To ensure the protection and maintenance of quality swale areas, the City is expected to proactively provide for enforcement of the provisions herein.
- E. Enforcement Procedure. It shall be the City's intent to seek voluntary compliance from affected property owners before issuance of a violation of this ordinance. Except as provided in Secs. 30-71(c) and (d) of the City Code, property owners in violation of this Article will be given a warning and an appropriate time to remedy the violation before a citation is issued. The City's enforcement efforts and actions will escalate to the level that is necessary to achieve compliance. .
- F. In all matters regarding the interpretation and application of this Ordinance, safety for pedestrians, vehicles and other appropriate and legitimate users of the City's swales shall be a primary concern.
- G. Citizen Responsibility. It is the purpose of this Ordinance to require that property owners adjacent to swales be responsible for and maintain the swale

area adjacent to their property. To enable citizens to succeed with the responsibility and accountability of maintaining swale areas, citizens will be afforded flexibility and options with regard to the appearance and use of swales adjacent to their property

- H. Trees and landscape. It is the intent of this Ordinance to encourage and promote planting and proper maintenance of trees and appropriate landscape material on the City Swales and specifically to promote the use of native species and the establishment and expansion of shade canopy on the City Swales.

Sec. 98-168. Definitions.

- A. Temporary Parking. Parking in a swale area by a person other than the Adjacent Owner, and such Adjacent Owner's tenants or guests, which is temporary and of a short duration, as defined in Sec. 98-175.
- B. Adjacent Owner. For purposes of the Swale Ordinance only, an Adjacent Owner is meant to be the property owner, and any such owner's tenants or guests, whose property road frontage directly abuts a City Swale area. Adjacent does not include the property to either side. Road frontage at the front, side or rear of a property shall be included in determining adjacency to Swale areas.
- C. Encroachment. Any use, construction, physical improvement, object or landscape item or material that is not permitted pursuant to the provisions of this ordinance.
- D. Landscape Material. Any tree or plant material or decorative landscape item, such as mulch, timbers, rock, decorative edging materials or other decorative landscape items.
- E. Improved Parking Area. Any area of a City Swale that has had physical changes, that displaces landscape or vegetative areas in order to provide parking consistent with the standards as further defined in Sec. 98-175.
- F. Swale. The area of public right of way between any paved or improved road edge and the private property adjacent to the roadway. This area may or may not include an improved sidewalk.

Sec. 98-169. General Standards and Provisions.

- A. The Ordinance and the standards contained herein shall become effective in each neighborhood upon completion of that neighborhood's City's Streetscape Capital Improvement Projects, including the expiration of any

applicable warranty period, as provided within the Series 1999 General Obligation Bond. For any neighborhoods not scheduled to have improvements and public funds expended on the swales, the effective date of this Ordinance shall be _____.

- B. The application of the Swale Ordinance shall be in single family neighborhoods or neighborhoods of mixed use that include single family residences and other permitted uses and specifically within the zones designated as RS-1, RS-2, RS-3, and RS-4.
- C. Private driveways utilized to access a public right-of-way/roadway are exempt from regulation within this policy and shall continue to be regulated by the Department of Public Works through right-of-way permits as set forth in Chapter 82 of the City Code and appropriate standards and regulations contained therein.

Sec. 98-170. Allowed Uses.

Except as otherwise provided in Sec. 98-171, only the following uses shall be allowed within the City's Swale:

- 1. Approved and permitted landscape materials. Movable objects, including concrete buttons, pyramids or rocks, are not permitted.
- 2. Parking as authorized in this chapter.
- 3. Improved parking areas that are approved and permitted.

Sec. 98-171. Legal Non-conforming Encroachments

- A. Non-Parking Encroachments. Any encroachments existing as of the effective date of this Ordinance shall be allowed to continue until the time of sale of the Adjacent Owner's property or more than a 50% improvement is made to the structure of the Adjacent Owner, so long as a permit is issued by the Public Works Department that stipulates findings of no adverse impact of the encroachment regarding each of the following areas:
 - 1) Area wide drainage systems;
 - 2) Pedestrian, vehicular or other appropriate user of the City's right-of-way;
 - 3) A finding that the encroachment: a) has no adverse impacts on the area, the uses thereof, or line of sight requirements, and b) is in compliance with the tree or plant materials permitted by the City Code or the Miami-Dade County Code; and
 - 4) Safety.

The requirements of Sec. 98-174 shall apply to all landscape in the Swale. Any encroachment that exists after January 1, 2006 that is not issued a Swale permit

by the Public Works Department shall be removed at the owner's expense. Continuation of an encroachment after January 1, 2006 shall constitute a violation of this Article.

- B. Improved Parking Encroachments. Those properties with improved parking areas in existence at the time of this policy that: 1) do not otherwise comply with Sec. 98-175 and 2) are not subject to removal and/or replacement through any capital improvement program work undertaken by the City, shall be brought into compliance with Sec. 98-175 at the expense of the Adjacent Owner no later than January 1, 2006.

Sec. 98-172. Swale Permit Requirements; Appeal of Permit Denial.

All uses of the swale area, except Temporary Parking, shall require a Swale permit from the City. Swale Permits are issued by the Public Works Department after a review and determination that an application is in compliance with the policies and standards herein. Swale permit fees shall be set by resolution of the City Commission. In the event that an applicant is denied a Swale permit, an appeal may be made by the applicant to City Manager, or the City Manager's designee, under the procedures set forth in Sec.102-385.

Sec. 98-173. Maintenance Requirements and Responsibilities.

- A. It shall be the responsibility and at the expense of the Adjacent Owner, to maintain the Swale pursuant to the design requirements and standards defined in this Article and as provided in Article V.
- B. The City's responsibility for the maintenance of physical improvements which are constructed in the Swale by the City as part of capital improvement projects undertaken by the City shall be limited to those capital improvements including, but not limited to, drainage structures, parking areas, or sidewalk repair.
- C. The City will retain responsibility for the pruning and maintenance of any tree installed by the City in the Swale. The Adjacent Owner will be responsible to provide water as required and to advise the City of any deterioration of the tree's health. Adjacent Owners, at their expense, may be granted permission by the Parks Department to use City licensed and bonded tree maintenance companies for maintenance of City trees on the Swale. Any such permission granted shall be in written form and specific as to the nature of the work to be performed and the tree(s) to be affected. A licensed tree maintenance company shall, as part of the condition of being granted a license, adhere to tree trimming standards and procedures as specified by the City.

Sec. 98-174. Landscape Requirements.

- A. It shall be the responsibility of the Adjacent Owner to maintain all permitted Landscape Material within the Swale to the aesthetic and quality standards as defined herein by pictorial survey. Said pictorial survey may be amended by Resolution of the City Commission from time to time, and is incorporated herein by reference as Appendix A.
- B. No Landscape Material that is installed by the City in a Swale may be removed by the Adjacent Owner, or any other person, without a permit issued by the City for such purpose.
- C. Only approved and permitted Landscape Materials may be placed in the Swale by an Adjacent Owner, with the exception of sidewalks; approved driveway aprons; and approved parking areas. Living plant material such as grass, trees, and approved shrubs, bushes, or ground cover shall be the majority and preferred treatment for Swale areas.
- D. All plantings in the Swale shall be from an approved species list as maintained by the City's Planning Department which shall reflect native and other approved species and appropriate plant placement and installation standards for each species. At a minimum, any tree or landscape material in the Swale shall be separated by a clear area of 20 feet between any such tree or landscape material as measured parallel to the road. Continuous hedges shall not be permitted, however, groups of landscape materials may be permitted so long as they conform to the 20-foot minimum clear area requirement.
- E. Other landscape items such as shrubs, bushes, and ground cover may be permitted if approved in a Swale permit. Such landscape material shall not obscure pedestrian or vehicular sight lines pursuant to the provisions of Sec. 142-135. Use of other non-tree landscape material shall be of a type or species so as to be appropriate in scale and size in the affected Swale area. Plant materials that require frequent or extensive maintenance so as not to become overgrown will be discouraged. Examples of appropriate landscape materials, size, and scale are incorporated in the pictorial inventory that is included by reference in this Article in Exhibit A. Adjacent Owners will be allowed to install irrigation within the City's Swale as part of a Swale permit, if so requested.
- F. Permitted landscape materials or features shall not have an adverse impact upon area drainage.
- G. Decorative or accent lighting may be permitted in a Swale which does not adversely affect either driver or pedestrian safety. Any swale lighting must be approved in a Swale permit.

Sec. 98-175. Parking Area Requirements and Standards.

- A. Except as set forth in Sec. 98-175(C), all parking on the Swale shall be parallel to the road. Only one vehicle, parked parallel to the road, shall be permitted in any twenty (20) foot linear section of Swale adjacent to the road.
- B. Adjacent Owners are permitted to construct one (20) twenty-foot Improved Parking Area for each 50 foot of property frontage adjacent to the Swale. Use of subsurface stabilization materials in the Swale are not subject to the restrictions or requirements of this section. A permit must be obtained for any construction in the Swale pursuant to the requirements of this Article.
 - 1. Any Improved Parking Area shall be designed so as not to impair drainage within the area.
 - 2. No asphalt, concrete or rock surfaced parking areas will be permitted. Adjacent Owners desiring to construct an Improved Parking Area must use approved materials which will include, but not be limited to, permeable pavers or below ground geo textile materials and fabrics that are permeable and stabilize the affected area. Other materials which are permeable and add stability to the defined property areas may also be permitted by the City as approved alternates. Improved Parking Areas shall have a neat and uniform appearance with no weed growth and must be capable of sustaining any grass or plant material that is incorporated into the structure in a manner consistent with the pictorial survey included herein by reference in Exhibit A.
- C. If a Swale extends 20 feet or more from the paved or improved road edge and does not have a sidewalk, parking perpendicular to the roadway is permitted for two vehicles in each 50 foot wide section of property frontage adjacent to the City Swale, so long as the swale use is consistent with all other standards in this Article.
- D. Construction site parking. Adjacent Owners shall, prior to commencing work pursuant to a building permit, obtain a Swale permit from the Public Works Department for any construction related parking that is to occur on the Adjacent Owner's property. The Public Works permit shall detail the areas of parking that are permitted by construction-related vehicles and shall specify the restoration plan for any affected Swale which must be completed before issuance of a certificate of occupancy or final inspection for the subject property. A bond shall be posted with the City by the Adjacent Owner in an amount equal to the cost of the restoration plan prior to the issuance of the Swale permit. Any construction-related parking that is to be permitted on a Swale other than the Swale of the property owner with a building permit, shall first receive the permission of the Adjacent Owner of any other affected property and the permission shall be reflected in the permit issued by the Public Works Department.

- E. Temporary Parking limitations and enforcement. Parking on a Swale by other than the Adjacent Owner shall only be temporary in nature. Temporary parking on a Swale shall be limited to a maximum of 4 hours in any 24-hour period and no more than 2 times in any week for temporary parking on the same Swale. Temporary parking shall not exceed a total of 8 hours per calendar week. Parking on a Swale by other than the Adjacent Owner and such owner's tenants or guests in excess of the temporary parking limits shall constitute a violation of this Ordinance. Violations of this section shall be governed by the violation penalties and procedures established in Chapter 106 and enforced by the City's Parking Department.
- F. Adjacent Owners shall be granted the authority to park on the Swale adjacent to their respective property at any time and beyond the temporary parking limits established herein.

Sec. 98-176. Penalties.

- A. Violations of the provisions of this Article, with the exception of parking violations that are dealt with in Sec. 98-175 and violations relative to tree damage or removal covered in subsection B herein, shall be enforced per City Code Chapter 30, Article III. A repeat offender for purposes of the Swale Ordinance is any person that is found guilty of a violation of this section more than two times in any six month period.
- B. Any violation of this Article that involves damage, removal, or impact to trees shall be governed by the provisions and enforcement penalties and procedures in the Miami Dade County Code of Ordinances, Sec. 24-60, which is incorporated herein by reference.